

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SAM D' AMBROSIO,  
Plaintiff,  
v.  
COMMISSIONER OF SOCIAL SECURITY,  
Defendant.

Case No. 1:21-cv-00368-CDB (SS)

**ORDER ON STIPULATION FOR  
ATTORNEY'S FEES PURSUANT TO THE  
EQUAL ACCESS TO JUSTICE ACT, 28  
U.S.C. § 2412(d)**

(Doc. 28)

Pending before the Court is the stipulated request of Plaintiff Sam D' Ambrosio ("Plaintiff") for the award of attorney's fees pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d).<sup>1</sup> (Doc. 28). Plaintiff requests an award of attorney's fees in the amount of \$6,250.00 to counsel for Plaintiff, Jonathan O. Peña. *Id.*

On June 25, 2024, the Court issued an order granting Plaintiff's motion for summary judgment and remanding this action for further proceedings under sentence four 42 U.S.C. § 405(g). (Doc. 25). The Court held the Administrative Law Judge erred by failing to "correct the error at step five of the sequential evaluation process." *Id.* at 8-15. That same day, judgment was entered in favor of Plaintiff against the Commissioner of Social Security ("Commissioner" or "Defendant"). (Doc. 26).

<sup>1</sup> Both parties have consented to the jurisdiction of a U.S. magistrate judge for all proceedings in this action, in accordance with 28 U.S.C. § 636(c)(1). (Doc. 10).

1 On September 19, 2024, the parties filed the pending stipulated request for attorney fees.  
2 (Doc. 28). In the parties' stipulated request, Plaintiff requests an award of attorney fees as the  
3 prevailing party. *Id.*; see *Shalala v. Schaefer*, 509 U.S. 292, 300-02 (1993) (concluding that a  
4 party who prevails in a sentence-four remand order under 42 U.S.C. § 405(g) is a prevailing  
5 party). Plaintiff's request is timely. *Van v. Barnhart*, 483 F.3d 600, 607 (9th Cir. 2007).

6 The EAJA provides for an award of attorney fees to private litigants who both prevail in  
7 civil actions (other than tort) against the United States and timely file a petition for fees. 28  
8 U.S.C. § 2412(d)(1)(A). Under the EAJA, a court shall award attorney fees to the prevailing  
9 party unless it finds the government's position was "substantially justified or that special  
10 circumstances make such an award unjust." *Id.* To be "substantially justified," the government's  
11 litigation position and the underlying agency action must have a "reasonable basis both in law  
12 and fact." *Pierce v. Underwood*, 487 U.S. 552, 565 (1988); *Ibrahim v. DHS*, 912 F.3d 1147,  
13 1167 (9th Cir. 2019) (en banc). A determination that an ALJ's decision "was unsupported by  
14 substantial evidence is therefore a strong indication that the 'position of the United States'...was  
15 not substantially justified." *Thangaraja v. Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005). Because  
16 "substantial evidence" is a "deferential...standard of review" and refers to "such relevant  
17 evidence as a reasonable person might accept as adequate to support a conclusion," a finding that  
18 substantial evidence is lacking usually means "the government's underlying action was not  
19 substantially justified." *Meier v. Colvin*, 727 F.3d 867, 872 (9th Cir. 2013). Here, the Court  
20 determined the ALJ erred at step five and the ALJ's decision was not supported by substantial  
21 evidence. (Doc. 25 at 14). Moreover, the Commissioner has stipulated to Plaintiff's request.  
22 (Doc. 28). Accordingly, Plaintiff is eligible for EAJA fees.

23 Having determined that Plaintiff is eligible for EAJA fees, the Court must determine what  
24 fee is reasonable. *Comm'r, I.N.S. v. Jean*, 496 U.S. 154, 161 (1990). Plaintiff requests an award  
25 of \$6,250.00. (Doc. 28). Counsel for Plaintiff has provided an itemization of the hours worked  
26 on this case (30.7 hours) and requests the statutory maximum hourly rates authorized by the  
27 EAJA for 2021 (\$217.54), 2022 (\$234.95), and 2023-24 (\$244.62). (Doc. 28-2); see *Thangaraja*  
28

1 *v. Gonzales*, 428 F.3d 870, 876-77 (9th Cir. 2005).<sup>2</sup> The Court has reviewed the docket and finds  
2 this request reasonable and commensurate with the number of hours an attorney reasonably  
3 would need to have spent reviewing the certified administrative record in this case (1,128 pages)  
4 and preparing a motion for summary judgment raising two issues for review. (Docs. 12-1, 18).  
5 With respect to the results obtained, Plaintiff's counsel obtained a favorable judgment remanding  
6 the case for further administrative proceedings. (Docs. 25-26).

7 EAJA fees, expenses, and costs are subject to any offsets allowed under the Treasury Offset  
8 Program ("TOP"), as discussed in *Astrue v. Ratliff*, 560 U.S. 586 (2010). If the Commissioner  
9 determines upon effectuation of this order that Plaintiff's EAJA fees are not subject to any offset  
10 allowed under the TOP, the fees shall be delivered or otherwise transmitted to Plaintiff's counsel.

11 Accordingly, it is HEREBY ORDERED:

- 12 1. Plaintiff's stipulated request for the award of attorney's fees pursuant to EAJA (Doc. 28)  
13 is GRANTED;
- 14 2. The Commissioner is directed to pay Plaintiff as the prevailing party attorney fees in the  
15 amount of \$6,250.00. Unless any offsets are applied under TOP, the government shall  
16 make payment of the fees to Plaintiff's counsel Jonathan O. Peña in accordance with  
17 Plaintiff's assignment of fees and subject to the terms of the stipulation.

18 IT IS SO ORDERED.

19 Dated: September 25, 2024

  
20 \_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE

27 <sup>2</sup> Statutory Maximum Rates Under the Equal Access to Justice, available at  
28 <https://www.ca9.uscourts.gov/attorneys/statutory-maximum-rates/> (last visited September 23,  
2024).